The Timken Company *and* United Steelworkers of America, AFL–CIO. Case 8–CA–22123

February 7, 1991

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

On October 24, 1990, Administrative Law Judge Donald R. Holley issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, The Timken Company, Canton, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(c).

''(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.''

2. Substitute the attached notice for that of the administrative law judge.

[1] The judge inadvertently refers to the Union's chief negotiator, Joseph Coyle, as director of the Respondent's, rather than the Union's, District 27.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT interfere with the efforts of United Steelworkers of America, AFL–CIO, to bargain on behalf of the employees in the units described below by insisting to impasse, over union objection, on the presence of a court reporter to make verbatim transcript of bargaining negotiations.

WE WILL NOT in any like or related manner interfere with the efforts of the Union to bargain collectively on behalf of the employees in the units described below:

> All production and maintenance workers employed by the Respondent in the bearing, steel and tube plants at Canton, Ohio, the steel and tube plant and bearing plant at Cambrinus [just outside the City of Canton], and the plants at Wooster and Columbus, Ohio, of the Company, excluding supervisors, assistant supervisors, or supervisors in charge of any class of labor, bricklayers, watchmen, guards, factory clerks, or other clerical workers and salaried employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

THE TIMKEN COMPANY

Allen Binstock, Esq., for the General Counsel.
Larry R. Brown, Esq. (Day, Ketterer, Raley, Wright & Rybolt), of Cleveland, Ohio, for the Respondent.

DECISION

STATEMENT OF THE CASE

DONALD R. HOLLEY, Administrative Law Judge. On a charge filed in the above-captioned case on September 28, 1989,[1] by United Steelworkers of America, AFL–CIO (the Charging Party or the Union), the Regional Director for Region 8 of the National Labor Relations Board issued a complaint on November 7 which alleged, in substance, that The Timken Company (the Respondent) violated Section 8(a)(1) and (5) of the National Labor Relations Act by insisting to impasse since August 17 on the presence of court reporters to make a stenographic record of negotiations as a precondition for any further bargaining sessions. Respondent filed timely answer to the complaint denying it had engaged in the unfair labor practices alleged.

The case was heard in Canton, Ohio, on March 1, 1990. All parties appeared and were afforded full opportunity to participate. On the entire record, including careful consideration of posthearing briefs filed by the parties, and from my observation of the demeanor of the witnesses who appeared to give testimony, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, an Ohio corporation with offices and places of business in Canton, Cambrinus, Wooster, and Columbus, Ohio, is engaged in the production of tapered roller bearings and special alloy steels, including bars and tubes. In the course aand conduct of its above-described operations, it annually sells and ships from its Ohio facilities products, goods, and materials valued in excess of $50,000 to points outside the State of Ohio. It is admitted, and I find, that Re-

[1] All dates herein are 1989 unless otherwise indicated.

spondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. STATUS OF LABOR ORGANIZATION

It is admitted, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

The Union has been the exclusive collective-bargaining agent of employees in the following appropriate bargaining units since 1937:

> All production and maintenance workers in the bearing, steel and tube plants at Canton, Ohio, the steel and tube plant and bearing plant at Cambrinus [just outside the City of Canton], and the plants at Wooster and Columbus, Ohio, of the Company, excluding supervisors, assistant supervisors, or supervisors in charge of any class of labor, bricklayers, watchmen, guards, factory clerks, or other clerical workers and salaried employees.

Respondent has recognized and bargained with the Union as the exclusive bargaining agent of employees in the above-described units since 1937. During the years, approximatey 20 basic labor agreements have been negotiated by the parties. Court reporters have attended all negotiation sessions and they have stenographically recorded such sessions. The court reporters furnished a daily copy of the negotiations. The record further reveals that court reporters have been present at and have stenographically recorded all step 3 grievance meetings and all arbitration sessions from 1937 to the present date.

B. *General Counsel's Case*

Joseph Coyle, director of Respondent's District 27 and chairman of the Union's 24 member negotiating committee during the 1986 and 1989 contract renewal negotiations, testified that prior to 1986 the Union bargained with a coordinating committee representing a number of steel companies with an object of reaching a pattern contract. He indicated the coordinating committee and/or pattern agreement approach was abandoned before the 1986 negotiations between the Union and Respondent and, that in his view, the absence of a pattern contract produced a need for free and open exchanges during the 1986 and 1989 contract negotiations with Respondent and other companies.

The record reveals Respondent and the Union were unable to reach accord on the terms for a new agreement before the then-subsisting contract expired in the fall of 1986. When the old contract expired, the Union, for the first time in 18 years, engaged in a strike which lasted approximately 4 weeks. The parties eventually reached tentative agreement on the terms of a new contract, which was to be effective from 12:01 a.m. October 12, 1986, until 12:01 a.m. September 25, 1989. On October 8, 1986, after tentative agreement had been reached, the following exchange between Coyle and Respondent's chief spokesman, Donald Simonson, occurred (G.C. Exh. 2, pp. 2299–2301):

> Mr. Coyle: That's it.
>
> Mr. Simonson: Sine die?
>
> Mr. Coyle: Oh, not yet.
>
> Concerning the next negotiations, I would like to make a comment with respect to these negotiations, and point out to you that I seriously and honestly feel that the use of a reporter transcribing the proceedings is really an impediment to our reaching a collective bargaining agreement without a strike.
>
> We had many instances during these negotiations where, as the result of the transcription, by its nature, inhibiting the free exchange. We also had a number of instances whereby members had read the transcript in your office, and, perhaps, misinterpreting, or had their own understanding of what was meant and what was said.
>
> We have had other instances where supervision from time to time, after reading the transcript, would make representations to our members.
>
> And quite frankly, it is a serious impediment to collective bargaining, and I think it is certainly a reason for us not have been able to reach an agreement without a work stoppage.
>
> And we would request that the negotiations in 1989 be conducted in a very free and open way, absent the use of a court reporter.
>
> I wanted to mention that to you during these negotiations.
>
> Mr. Simonson: Having just reached agreement, it's unfortunate, we disagree. We absolutely disagree.
>
> Mr. Coyle: We have to end on a disagreement, we began on a disagreement, and we are ending on a disagreement.
>
> Mr. Simonson: I will tell you quite frankly, if I am the negotiator in 1989, you can anticipate that we will have a court reporter present, and we will take transcript.

In 1989, contract renewal negotiations between Respondent and the Union began on August 17. Coyle remained the chairman of the Union's negotiating team, and Simonson was Respondent's chief spokesman. At the outset of the first bargaining session, Coyle objected to the presence of a court reporter, stating (R. Exh. 1, p. 4):

> Mr. Coyle: Let me, if I may, let me make a brief comment concerning the presence of the court reporter. You may recall that I advised you at the termination of our last negotiations that I felt this was an impediment to our being able to reach an agreement, and I want you to know that I object to his presence.
>
> Mr. Simonson: Duly noted.

After Coyle made the above-quoted remark, and Simonson made the comment noted, the parties proceeded to engage in contract negotiations, and the court reporter remained in the room to stenographically record their negotiations.

At some point in the negotiating session held on September 13, 1989, Simonson made comment to the effect that issues raised by the union bargaining team were considered ''very seriously'' by Respondent. Immediately thereafter, Coyle objected to the presence of a court reporter at the negotiations stating (R. Exh. 2, pp. 831–832):

> Mr. Coyle: I would like to discuss one that I assume you have taken a very serious look at, and hear your feeling and your understanding on why you didn't respond to it. As you know, I feel very strongly that the presence of a court reporter is an impediment to collective bargaining and does not allow for the free exchange of ideas and discussion at the collective bargaining table. And it's used by the company, and I also feel is inappropriate.
>
> As you know, I have objected to the presence of the court reporter. I have not refused to negotiate and I think you are aware that I have reserved whatever rights we may have.

After making the above-quoted comments, Coyle raised an issue involving union representation of employees in the plants, and asked for Respondent's response. Simonson then responded to the representation in the plant issue, but failed to respond to the court reporter issue. At the conclusion of the discussion which concerned the representation issue, Coyle and Simonson engaged in the following exchange (R. Exh. 2, pp. 844–845):

> Mr. Coyle: See, Mr. Simonson, just a little general discussion and we have clarified probaby two issues here. And the fact of the matter is and you know as well as I do, our bargaining has been proposal, go back, come back and read. Proposal, go back, come back and read. Day after day.
>
> If we have open and free discussion and we are not reading things word for word for the record, and we are exploring people's ideas and listening to what they are saying rather than just reading words, I think we can make a great deal of progress in the next week.
>
> Mr. Simonson: I don't have any problems in discussing and listening, talking through these issues.
>
> Mr. Coyle: Okay.
>
> Mr. Simonson: And I thought that's what we have been doing from the beginning.
>
> Mr. Coyle: Mr. Simonson, you know we haven't been doing this. We have heen proposing and you have been reading. So let's have some general discussion.
>
> Mr. Simonson: I think you are misconstruing. From a personal standpoint I like to write things down and look at them, when I'm talking.
>
> Mr. Coyle: Mr. Simonson, I'm not talking about just you, I'm talking for every person on your side of the table when they respond to us. They also like to write down things and like to read it.
>
> Perhaps we could have a more open and free discussion, if we don't do that. If we have less writing and less reading and more discussing and more listening. Let's see if we can do that.
>
> Do you have anything further this afternoon?
>
> Mr. Simonson: No.
>
> Mr. Coyle: 10:00 in the morning?
>
> Mr. Simonson: Fine.

On September 21, 1989, Respondent and the Union held their 14th contract renewal negotiation session. The major unresolved issues at that time were the Union's demand for a higher pension, a wage increase, a cost-of-living program, and increased medical insurance coverage. During the bargaining session, Coyle voiced his opinion that the negotiations were made difficult by the presence of a court reporter.[2]

When the 1986–1989 contract between the parties expired at 12:01 a.m. on September 25, 1989, the Union commenced a strike which was to last approximately 5 weeks.

During the morning session of the bargaining meeting on September 27, 1989, Coyle objected to the presence of a court reporter on 2 occasions. He first linked the use of a reporter to the strike stating (R. Exh. 4, p. 1455):

> Mr. Coyle: Well, I would like to begin by asking you to remove the cause of this strike as the cause that resulted in our work stoppage three years ago, and that is the reporters taking these notes.
>
> I indicated to you three years ago, and at the beginning of these negotiations, that the taking of and transcribing of these notes and their use by the company has made it impossible for us to bargain in good faith, and clearly is the cause of this work stoppage.

Subsequently, after complaining ahout the timing of the tender of proposals by Respondent, he remarked (R. Exh. 4, p. 1457):

> So, Mr. Simonson, I don't hold out much hope because of your refusal to really negotiate, because of your refusal to remove from this room the court reporters that frustrate bargaining and clearly have caused this strike, I assure you, however, that this committee will meet between now and 1:30 and make every effort to find a solution to this problem.

At the commencement of the afternoon session of bargaining on September 27, 1989, Coyle made the following statement (R. Exh. 4, p. 1460):

> Mr. Coyle: Mr. Simonson, I would ask once again that we conduct these negotiations without the presence of a reporter, and hope that you would ask the reporter to leave so that we can bargain effectively and reach an agreement.

Simonson, who had ignored all of Coyle's remarks and requests regarding the presence of a court reporter at negotiations, responded to Coyle's above-quoted request stating (R. Exh. 4, p. 1460):

> Mr. Simonson: Mr. Coyle, we are here ready to bargain. We are here ready to proceed. I would suggest that we discuss what it takes to get our people back to work.

C. *Respondent's Defense*

Respondent presented its defense through testimony given by Donald Simonson, its director of labor relations, and by introducing certain documentary evidence.

Simonson indicated he was hired by Respondent in 1971, and that he has spent most of his time with the Company performing work related to labor relations. He testified he participated in contract negotiations with the Union in years

[2] See R. Exh. 3, pp. 1442–1443.

1971, 1981, 1983, 1986, and 1989. He was Respondent's chief spokesman during the 1986 and 1989 negotiations.

During his testimony, Simonson observed that a court reporter has attended and reported all contract negotiation sessions, all step 3 grievance meetings, and all arbitration proceedings held by the parties since the Union was recognized in 1937. He claimed, without contradiction, that the Union never objected to the presence of a court reporter at contract negotiations sessions prior to the time Coyle voiced objection at the conclusion of the 1986 contract negotiations, and that it has not, to the present date, voiced any objection to the presence of a court reporter at step 3 grievance meetings or arbitration proceedings.

Simonson testified a reporting firm owned by one Sid Gantverg has reported all formal meetings between Respondent and the Union since the late 1940s. He described Gantverg as being a friend of both sides who entertained both sides by having them as his guest at a Cleveland Browns football game each year. According to Simonson, Gantverg helps the parties ''arrange themselves'' at the conclusion of contract negotiations by making arrangements for the signing of agreements reached.

Simonson testified there are approximatey 5500 employees in the bargaining units represented by the Union. During 1977, Respondent advised unit employees, through comments placed in a company publication, that they could inspect a copy of the transcript of negotiations in its personnel office. Simonson indicated no further written notices regarding the transcripts were issued, but some 10 employees inspected bargaining transcripts in Respondent's personnel office during the 1989 negotiations. He indicated the Union has purchased daily copy of the bargaining transcripts since the 1940s, and the record reveals the Union also makes such transcripts available to employees for inspection.

With respect to Respondent's use of bargaining transcripts during negotiations, Simonson indicated they are made available to key management personnel such as Respondent's president, its vice presidents in charge of the steel and roller bearing business units, and others. The key management officials then decide as a team what Respondent's proposals or responses to union proposals will be.

Simonson testified the union negotiators utilize the daily bargaining transcripts during negotiations to obtain clarification of company proposals. He indicated that both parties utilize the reporter and the bargaining transcript to place on the record the disposition of local or departmental issues as the parties do not include ''side issues'' in their collective-bargaining agreements. According to Simonson, Respondent responded to approximately 200 ''side issues'' involving local or departmental matters during the 1989 contract negotiations. He indicated the parties consider positions taken on local or departmental issues to constitute their agreement on such matters during the term of the various bargaining agreements.

Turning to the use of the transcripts of bargaining sessions during the terms of the contract, Simonson testified that both the Company and the Union refer to excerpts from such transcripts in third-step grievance meetings and in arbitration proceedings. In support of his assertion, Respondent placed in evidence as its Exhibit 5 a document which reveals that excerpts from bargaining transcripts were submitted by the Company or the Union in some 41 arbitration proceedings held during the term of the 1983, 1986, and 1989 collective-bargaining agreements. With specific regard to the transcripts of 1989 contract negotiations, Respondent, through Simonson, placed Respondent's Exhibit 6 in evidence to show that excerpts from the 1989 bargaining transcripts were presented to an arbitrator by the Union to enable it to prevail on a grievance involving incentive pay.

Simonson indicated during his testimony that use of a court reporter during contract negotiations is beneficial to both parties as it assists them in focusing on the issues, it lessens the use of objectionable language, it avoids character assignations, and it promotes factual discussions rather than the making of unsupported comments. He observed Respondent and the Union had not experienced a strike for 18 years prior to 1986, and that prior to 1968, they had experienced 10 strike-free years.

With respect to Coyle's claim that participants in negotiations do not speak freely when a court reporter is present at contract negotiations, Simonson claimed that some 13 of the 24 members of the Union's negotiation committee have participated in negotiations prior to 1989, and he observed they are use to working in the presence of a court reporter. He testified he saw no evidence that the 1989 negotiations were restricted as a result of the presence of a court reporter.

While Simonson did not seem to refute the accuracy of those excerpts from the 1986 and 1989 bargaining transcripts which documented Coyle's comments concerning the presence of a court reporter at negotiations and/or replies he (Simonson) may have uttered, he sought to convince me that he did not consider the presence of a court reporter in negotiations to be an issue during the negotiations. In support of his claim, he indicated that when Coyle voiced his objection to the presence of a court reporter at negotiations at the conclusion of bargaining in 1986, he voiced his reply without knowing what Respondent's position on the presence of a court reporter at negotiations in 1989 would be. He further indicated that he did not take Coyle's court reporter-related remarks during the 1989 negotiations seriously because none of the union bargaining committee members vocally supported Coyle when he made the remarks; when the court reporter matter was raised, Coyle did not request that it be discussed; and the Union failed to present an ultimatum by continuing, after such remarks were made, to participate in negotiations. With further regard to the seriousness of Coyle's court reporter comments, Simonson testified he had numerous discussions with Coyle during the term of the 1986 contract, and during preliminary discussions, preceding the 1989 negotiations, but nothing was said by Coyle about the presence of a court reporter at negotiations during such discussion. Finally, Simonson testified that he did not during the 1989 negotiations precondition participation in bargaining on the presence of a court reporter.

Although Respondent does not contend in its brief that the management-rights article, which has appeared in all of its contracts since 1946, permitted it to cause a court reporter to attend contract bargaining sessions, it placed a copy of the 1986 contract in evidence as Respondent's Exhibit 7. ''Article III—Management'' states as follows:

> It is understood and agreed that the Company has all the customary and usual rights, powers, functions and authority of management.

> Any of the rights, powers, functions or authority which the Company had prior to the signing of this Agreement, or any Agreement with the Union, including those in respect of rates of pay, hours of employment or conditions of work, are retained by the Company, except as those rights, powers, functions or authority are specifically abridged or modified by this Agreement or by any supplement to this Agreement arrived at through the process of collective bargaining.

Analysis and Conclusions

The complaint alleges, and General Counsel contends, that by insisting to the point of impasse on the presence of court reporters to make a stenographic record of negotiations as a precondition for any further bargaining sessions, Respondent has, since August 17, 1989, violated Section 8(a)(1) and (5) of the Act.

Respondent's principal defense is that since the facts herein reveal the parties have utilized court reporters in negotiations for over 50 years, and it reveals they make extensive use of the transcripts of negotiations during and after negotiations, the issue of the presence of court reporters is a mandatory subject of bargaining. In the alternative, it contends it did not bargain to impasse on the court reporter issue, and it contends the Union, by failing to request bargaining after making what it labels as a perfunctory objection to the presence of the court reporter, waived its right to maintain the current unfair labor practice charge. I find Respondent's contentions to be without merit for the reasons set forth below.

Counsel recognize in their briefs that the Board held in *Bartlett-Collins Co.*, 237 NLRB 770 (1978), enfd. 639 F.2d 652 (10th Cir. 1981), cert. denied 542 U.S. 961 (1981), that issues involving the presence of a court reporter at negotiations are nonmandatory subjects of bargaining because they do not involve ''wages, hours, or other conditions of employment.'' In *Bartlett-Collins*, the Board explained its finding stating (at 773):

> The question of whether a court reporter should be present during negotiations is a threshold matter, preliminary and subordinate to substantive negotiations such as are encompassed within the phrase ''wages, hours, and other terms and conditions of employment.'' As it is our statutory responsibility to foster and encourage meaningful collective bargaining, we believe that we would be avoiding that responsibility were we to permit a party to stifle negotiations in their inception over such a threshold issue.

Subsequently, in *Latrobe Steel Co.*, 244 NLRB 528 (1979), enfd. in relevant part 630 F.2d 171 (3d Cir. 1980),[3] the Board further explained its reason for finding court reporter issues to be nonmandatory subjects of bargaining stating (at fn. 1):

> The Administrative Law Judge's finding that Respondent violated Sec. 8(a)(5) of the Act by preconditioning bargaining upon the presence of a court reporter is fully consistent with our recent decision in *Barlett-Collins Company*, 237 NLRB 770 (1978). In passing, we note that impasse on this issue can preclude collective bargaining on any topic whatsoever. Thus, although other procedural matters such as the location, date, and time of bargaining sessions may be agreed to by means other than through formal negotiation, insistence on the presence of a court reporter in effect reduces the options of the parties in the exchange of written communiques. We find such insistence at odds with the concept of meaningful bargaining and hence a violation of the duty to bargain in good faith imposed by the Act.

In the instant case, the factors which Respondent contends are so ''inextricably interwoven'' with the substance of the parties' contract that they must be deemed to be vitally related to the terms and conditions of employment of employees in the bargaining units include a history of 50 years plus of causing a court reporter to attend negotiations and produce a transcript of negotiations; use of bargaining transcripts to record positions on local issues; daily use of transcripts during negotiations to assist the parties in formulation of their respective positions; and reliance on excerpts from, bargaining transcripts by the parties in grievance and arbitration proceedings during the term of collective-bargaining contracts.

As noted by the General Counsel in his brief, the Board rejected a ''past practice'' defense in *Bakery Workers Local 455 (Nabisco Brands)*, 272 NLRB 1362 (1984), stating in relevant part (at fn. 2):

> Accordingly, even though the parties have had a longstanding practice of taping meetings, the Respondent could not lawfully insist that this practice continue over the Company objection [citation omitted].

With respect to the various uses of bargaining transcripts noted, similar assertions were made by the Barlett-Collins Company during enforcement proceedings. There the Company argued the issue of a court reporter at negotiations should be deemed to be a mandatory subject because, inter alia, recording bargaining sessions provides important benefits such as: it speeds bargaining by freeing parties of the burden of taking notes; it helps the parties in later construing and applying the final agreement; it is a source for the Board and courts to refer to in the event of litigation; and it promises responsibility in bargaining by minimizing idle chatter, filibustering and intemperate behavior. The court rejected the contention observing, inter alia (at 639 F.2d 656):

> Recording of bargaining sessions does have some positive aspects, but their value is not as great as the Company asserts when the recording is done over the objection of a party [footnote omitted].

Similarly, as noted by General Counsel in his brief (at p. 15), in *Bakery Workers Local 455*, supra, the charged union contended it was privileged to insist that negotiations be recorded because: (a) there was a longstanding practice; (b) the employer had not objected during the negotiation of six prior

[3] Latrobe Steel Company was a subsidiary of The Timken Company. While Respondent claims in its brief that when reviewing the Board's decision in *Bartlett-Collins*, the 10th Circuit indicated that preliminary matters could exist which were so ''inextricably interwoven with the substance of a contract'' that they could constitute a term or condition of employment, it failed to note that, after making a statement to that effect, the court added, ''*It is clear the presence of a court reporter is not such a matter* [639 F.2d 652 at 656].'' Emphasis added.

contracts; (c) a generalized preservation of rights clause in prior contracts acted as a waiver; and (d) both parties made use of the recordings in negotiations and the grievance procedure. The administrative law judge, with subsequent Board approval, rejected the defenses and found the 8(a)(5) and (1) violation alleged.

In sum, I find the past practice and use of transcript defenses interposed by the instant Respondent fail to establish that the presence of a court reporter at negotiations or the preparations by the reporter of transcript are mandatory subjects of bargaining. To the contrary, the Board's decision in *Bartlett-Collins* is applicable and such matters are nonmandatory subjects of bargaining.

I turn now to Respondent's contention that it did not bargain to impasse over the presence of a court reporter at negotiations. Factually, the record clearly reveals Union Spokesman Coyle indicated at the close of the 1986 contract negotiations that would oppose the presence of a court reporter at 1989 negotiations. Respondent's spokesman Simonson specifically indicated he disagreed and stated affirmatively that if he was the Company's spokesman at 1989 negotiations, a court reporter would be present and a transcript would be taken. While Simonson testified he did not actually know what the Company's position would be in 1989 when he made the comment described, I find that testimony is not credible. Continuing, at the very outset of the 1989 contract negotiations, Union Spokesman Coyle once again objected to the presence of a court reporter at the negotiations, indicating the reasons for his objection. Thereon, Respondent Spokesman Simonson merely commented ''duly noted.'' Thereafter, despite the fact that Union Spokesman Coyle reiterated his objection in the presence of the court reporter at the negotiations while continuing to participate in negotiations, Respondent Spokesman Simonson absolutely ignored the issue and refused, when directly asked to state Respondent's position, to do so. In my view, it is clear, and I find, that, by his actions and conduct, Respondent Spokesman Simonson indicated at the outset of the 1989 contract negotiations that Respondent had absolutely no intention of agreeing to the Union's request that negotiations be conducted without the presence of a court reporter. I further find that the factual scenario described reveals an impasse with respect to the issue of the presence of a court reporter at negotiations was reached at the outset of the 1989 contract negotiations.

Remaining for resolution is Respondent's contention that the Union waived its right to maintain the underlying unfair labor practice charge in this proceeding. In support of its waiver argument, Respondent claims that the parties' bargaining history considered together with ''the Union's express failure to request bargaining over the presence of the court reporter in the 1989 negotiations'' constitutes a waiver of its right to maintain the current unfair labor practice charge.

In support of its waiver argument, Respondent claims that union inaction and its use of the bargaining transcripts after voicing objection to the presence of a court reporter at negotiations establish that the Union waived its right to require that Respondent bargain over the presence of a court reporter at negotiations. A waiver of statutory bargaining rights must be ''clear and unmistakable.'' *Metropolitan Edison Co. v. NLRB*, 406 U.S. 693, 708 (1983). In the instant case, the Union voiced its objection to the possible use of a court reporter at 1989 negotiations at the end of the 1986 contract negotiations. It received Respondent's answer at that time; it disagreed and affirmatively indicated it would have a court reporter at the 1989 negotiations. The Union voiced its objection again at the outset of the 1989 negotiations, and Respondent refused to reply other than to say the objection was ''duly noted.'' Subsequently, at the September 13, 1989 negotiating session, the union spokesman expressly asked Respondent's spokesman to comment on his court reporter objection, indicating the Union reserved whatever rights it had. Respondent spokesman ignored the request and refrained from stating a position. In the circumstances described, I find Respondent's waiver argument is clearly without merit.[4]

In sum, I find that Respondent is responsible for the conduct and actions of its principal Spokesman Simonson, and that, through his conduct and actions, Respondent insisted to impasse at the outset of the 1989 contract negotiations that a court reporter attend negotiations and produce a transcript. By engaging in the acts and conduct described, Respondent violated Section 8(a)(5) and (1) of the Act.[5]

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. At all times material, the Union has been, and continues to be, the exclusive representative of Respondent's employees in the bargaining units set forth below for the purposes of collective bargaining within the meaning of Section 9(a) and (b) of the Act.

4. All production and maintenance workers employed by Respondent in the bearing, steel, and tube plants at Canton, Ohio, the steel and tube plant and bearing plant at Cambrinus [just outside the City of Canton], and the plants at Wooster and Columbus, Ohio, of the Company, excluding supervisors, assistant supervisors, or supervisors in charge of any class of labor, bricklayers, watchmen, guards, factory clerks, or other clerical workers and salaried employees constitute units appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

5. Respondent, by insisting, over union objection, to impasse on the presence of a court reporter to make verbatim transcripts of bargaining negotiations has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

THE REMEDY

It having been found that Respondent has engaged in and is engaging in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act, it will be recommended that it be ordered to cease and desist therefrom and to take certain af-

[4] The management-rights clause which has appeared in the collective-bargaining contracts entered by the parties since 1946, set forth, supra, makes no specific reference to the presence of a court reporter at negotiations. Patently, the clause would not support the waiver contention made by Respondent in this case. See *Bakery Workers Local 455*, supra.

[5] While the complaint alleges that Respondent engaged in independent violation of Sec. 8(a)(1), the General Counsel did not argue such a violation had been committed in his brief. I refrain from deciding the issues as the remedy would not be affected.

firmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the folowing recommended[6]

ORDER

The Respondent, The Timken Company, Canton, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interfering with the efforts of United Steelworkers of America, AFL–CIO to bargain on behalf of the employees in the units described below by insisting to impasse, over union objection, on the presence of a court reporter to make verbatim transcript of bargaining negotiations.

(b) In any like or related manner interfering with the efforts of the Union to bargain collectively on behalf of the employees in the units described below:

> All production and maintenance workers employed by the Respondent in the bearing, steel and tube plants at Canton, Ohio, the steel and tube plant and bearing plant at Cambrinus [just outside the City of Canton], and the plants at Wooster and Columbus, Ohio, of the Company, excluding supervisors, assistant supervisors, or supervisors in charge of any class of labor, bricklayers, watchmen, guards, factory clerks, or other clerical workers and salaried employees.

2. Take the following affirmative action necessary to effectuate the policies of the Act.[7]

(a) Post at its facilities located at Canton, Cambrinus, Wooster, and Columbus, Ohio, copies of the attached notice marked ''Appendix.''[8] Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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[6] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[7] Inclusion of a general bargaining order is not deemed to be necessary as the parties engaged in bargaining and reached agreement on the terms of a contract after the Union objected to the presence of a court reporter at negotiations.

[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''